

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO: 15-CR-4268 JB

ANGEL DELEON, et al.,

Defendants.

**DEFENDANTS' MOTION FOR ORDER TO SHOW CAUSE FOR NON-COMPLIANCE
OF DISTRICT COURT ORDERS DURING MAY 9-10, 2017 HEARINGS¹**

Defendants Christopher Garcia through co-counsel, Amy Sirignano of the Law Office of Amy Sirignano, PC and Christopher W. Adams of the Law Office of Christopher W. Adams, and Joe Lawrence Gallegos, through co-counsel Brock Benjamin, and Rick Sindel, and Edward Troup, through co-counsel, Cori Harbour-Valdez, and Pat Burke, and Billy Garcia, through co-counsel Robert Cooper, and Jim Castle, and Allen Patterson, through counsel Jeff Lahann, and Christopher Chavez, through co-counsel Orlando Mondragon, and John Granberg, and Arturo Arnulfo Garcia, through co-counsel Billy Blackburn, and Scott Davidson, and Mario Rodriguez, through co-counsel Santiago Hernandez, and Steven Potolsky, and Mauricio Varela, through co-counsel Mary Stillinger, and Joe Spencer, and Daniel Sanchez, through co-counsel Richard Jewkes, and Amy Jacks, and Anthony Ray Baca, through co-counsel Marc Lowry, and Theresa Duncan, and Carlos Herrera, through co-counsel Michael Davis, and Carey Bhalla, and Rudy Perez, through co-counsel Ryan Villa, and Justine Fox-Young, and Andrew Gallegos, through

¹ The Court conducted hearings in this matter during May 9, 10, and 11, 2017. The Court ordered the government to provide certain materials only during the first two (2) days (Docs. 1160, 1161).

counsel Donavon Roberts, and Shauna Gutierrez, through counsel Angela Arellanes, respectfully moves this Court for an Order to Show Cause requiring the government to disclose and/or act pursuant to the Court's oral orders during the May 9-11, 2017 hearings in this case. In support of this Motion, defendants respectfully state:

PROCEDURAL BACKGROUND

In the Second Superseding Indictment, Mr. Garcia, along with multiple codefendants, is charged with being a member of the Sindicato de Nuevo Mexico ("SNM") gang. Mr. Garcia is alleged to have committed two counts of Violent Crimes in Aid of Racketeering (Conspiracy to Murder) in Violation of 18 U.S.C. § 1959(a)(5) (Doc. 949, Count 10). Mr. Garcia was also charged with being a Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1) and Using and Carry a Firearm During and in Relation to a Crime of Violence in violation of 18 U.S.C. § 924(c) (Doc. 949, Counts 11 and 12). This case was ordered complex on January 11, 2016 (Docs. 210, 211).

On May 9 -11, 2017, this Honorable Court held hearings on pending motions in this case. (Docs. 1160, 1161, 1162).

LAW REGARDING THE PARTIES' OBLIGATIONS TO ABIDE BY A DISTRICT COURT ORDER

The obligation of attorneys for the government to comply and follow the Court's orders is built into the language of the rules and regulations of criminal proceedings. Federal Rule of Criminal Procedure 16(a)(1)(A) through (G) uses mandatory language "must" requiring the government to disclose evidence requested by the defendant. Fed. R. Crim. P. 16. Rule 16.1 uses mandatory language with respect to a Standard Discovery Order issued by the Court by stating the parties "will comply." D.N.M.LR-Cr. 16.1.

Rule 16(d)(2) permits the court to regulate discovery should a party fail to comply with the rule. Rule 16(d)(2) states:

If a party fails to comply with this rule, the court may:

- (A) order that party to permit the discovery or inspection; specify its time, place, and manner; and prescribe other just terms and conditions;
- (B) grant a continuance;
- (C) prohibit that party from introducing the undisclosed evidence; or
- (D) enter any other order that is just under the circumstances.

Rule 57.2 states attorneys will comply Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico. D.N.M.LR-Cr. 57.2. Rule 16-308 of New Mexico Rules of Professional Conduct addresses the special responsibilities required of prosecutors.

The prosecutor in a criminal case shall:

D. make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal . . .

G. **promptly disclose** new, credible and material evidence that creates a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted. Such evidence shall be disclosed in writing when it becomes known to the prosecutor, absent court authorization otherwise. If the defendant is unrepresented, the prosecutor shall inform a person reasonably certain to inform the defendant or take appropriate action.

Rule 16-608 NMRA of the Rules of Professional Conduct (emphasis added).

Also, in a Memorandum issued by the Department of Justice giving guidance to prosecutors in criminal discovery, Deputy Attorney General Ogden states:

Prosecutors should consult the local discovery rules for the district in which a case has been indicted. Many districts have broad, automatic discovery rules that require Rule 16 materials to be produced without a request by the defendant and within a specified time frame, unless a court order has been entered delaying discovery, as is common in complex cases. Prosecutors must comply with these local rules, applicable case law, and any final court order regarding discovery. In the absence

of guidance from such local rules or court orders, prosecutors should consider making Rule 16 materials available as soon as is reasonably practical but must make disclosure no later than a reasonable time before trial . . . Discovery obligations are continuing, and prosecutors should always be alert to developments occurring up to and through trial of the case that may impact their discovery obligations and require disclosure of information that was previously not disclosed . . . Compliance with discovery obligations is important for a number of reasons. First and foremost, however, such compliance will facilitate a fair and just result in every case, which is the Department's singular goal in pursuing a criminal prosecution.

See Deputy Attorney General David W. Ogden, Memorandum for Department of Prosecutors, Department of Justice Archives,

<https://www.justice.gov/archives/dag/memorandum-department-prosecutors>; Exh. 1.

The government's duty to comply with the District Court's order to disclose evidence and discovery is a basic and standard premise which allows criminal proceedings to operate smoothly.

**GOVERNMENT'S DISCOVERY OBLIGATIONS ORDERED BY JUDGE BROWNING
DURING THE MAY 9-10, 2017 HEARINGS**

During the May 9 -10, 2017 hearings, the Court ordered that the following be produced . . .
Tr. 5/9/17, 5/10/17 (Docs. 1160, 1161).

- Review/Disclose Brady, Giglio, Rule 16 written and recorded statements re allegations in Counts 6 & 7 made by Timothy Martinez, Jerry Armenta, and Jerry Montoya (Tr. 5/9/17, 203:1-8) by June 9, 2017 (Tr. 5/9/17, 215:1-9). The government produced these ordered documents in the productions titled, "Armenta – DeLeon 28242; dated June 16, 2017, and DeLeon 22113-22114," dated May 23, 2017.

- Disclose plea addenda for Timothy Martinez, Jerry Armenta, and Jerry Montoya (Tr. 215:20-25) to all relevant defendants in 14 days (Tr. 5/9/17, 232:10-25, 226:1-8). The government produced these ordered documents in the productions titled, "Timothy Martinez –

DeLeon 22127-22128;” and in “Jerry Armenta - DeLeon 22113-22114;” and “Jerry Montoya - DeLeon 22129-22130,” all dated March 22, 2017.

- Review/Disclose FBI 302s, law enforcement notes pertaining to Timothy Martinez, Jerry Armenta, and Jerry Montoya (Tr. 5/9/17, 234:2-4) (235:7-24). The government produced these ordered documents in the productions titled, “Timothy Martinez – DeLeon 22127-22128 (Exhibit A),” dated March 22, 2017; “Armenta – DeLeon 28242,” dated June 16, 2017; “DeLeon 2249-2253,” dated March 25, 2017; “Montoya – DeLeon 26520-26526,” dated June 16, 2017; and “DeLeon 20595-20596,” dated March 10, 2017.

- Preserve law enforcement rough interview notes (Tr. 5/9/17, 236:1-18).
- Provide written response regarding 10 discs observed but not reviewed during SNMCF evidence viewing within 10 days including Bates numbers if already produced. If new evidence, produce within 14 days. (Tr. 5/9/17, 241:2-6, 241:16-22).

- Provide written confirmation that no additional physical evidence exists within 10 days, not to be construed as ground for exclusion (Tr. 5/9/17, 246:15-25, 249:20-25).

- Defense granted permission to handle physical evidence in presence of non-party NMSP evidence tech (Tr. 5/9/17, 250:12-22, 252:20-25).

- AUSA Beck agrees to provide date of Perez/Cordova recording redacted from the transcript (Tr. 5/9/17, 262:13-20).

- AUSA Armijo agrees to produce any transcripts not otherwise disclosed within 10 days (Tr. 5/9/17, 264:5-6, 265:1-4).

- Review/Disclose Brady, Giglio, Rule 16 notes of CHS law enforcement handlers within 14 days (Tr. 5/10/17, 4:17-20, 5:25, 6:1-2).

- Review/Disclose Brady, Giglio, Rule 16 of documentation/correspondence between FBI, STIU, and NMCD regarding Billy Cordova and the possession of contraband such as phones and recording devices within 14 days (Tr. 5/10/17, 6:9-15, 10:1-11).
- AUSA Beck agrees to provide Billy Cordova's Pen Pack and STIU file (Tr. 5/10/17, 10:13-21, 12:1-8). The government produced these ordered documents in the production titled, "DeLeon 23142-23215," dated May 23, 2017.
- AUSA Beck agrees that if the government obtains it, the government will produce NMCD's internal affairs investigation to attorneys Nate Chambers, and Cori Harbor-Valdez (Tr. 5/10/17, 48:3-8, 49:20-24, 50:2).
- Review/Disclose Brady, Giglio, Rule 16 grand jury transcripts related to Counts 4 & 5 (Tr. 5/10/17, 94:17-25, 105:2-8).
- AUSA Beck agrees, and Judge Browning orders disclosure of specific informant medical/psych records for Teri and Marc (Tr. 5/10/17, 146:3-9).
- AUSA Beck agrees to produce defendant Baca's prison calls and visitor logs at the Dona Ana County Detention Center from 2/1/2015 – 9/14/2016 (Tr. 5/10/17, 146:11-14, 147:3-4).
- AUSA Beck agrees to produce tangible evidence or materials collected during searches of defendant Baca's cells and all documents related to the collection of that evidence or material while Baca was incarcerated in the NMCD (Tr. 5/10/17 *see generally* 148-149). The government produced these ordered documents in the productions titled, "Deleon 27757-27864," dated June 16, 2017.

- AUSA Beck agrees to send letters to Teresa Duncan, Justine Fox-Young, and the Court regarding whether the CHSs' recording devices contained metadata (Tr. 5/10/17 153:3-8, 153:23).
- AUSA Beck agrees to produce photographs from cell phones that the government provided to informants, if in the possession of the government (Tr. 5/10/17 154:20-25, 155:1-8).
- AUSA Beck agrees to permit defense experts conduct physical review of cell phones in the possession of the government or put in writing that the phones are not in the government's possession (Tr. 5/10/17, 155:11-21).
- Review/Disclose Brady, Giglio, and Rule 16 evidence regarding NMCD Secretary Marcantel's statements to A&E Rookie of the Year or NMCD following the Molina murder and Anthony Baca's move out of the state (Tr. 5/10/17, 163:7-14). Government to provide whether the statements were recorded by NMCD. AUSA Beck agrees to confer with NMCD regarding whether NMCD recorded the statements and let Theresa Duncan know (*Id.* at 167:1-8).

CONCLUSION

The defendants have been careful to review the government's propounded discovery to ascertain whether it has abided by the District Court's orders from May 9-10, 2017. Only the items detailed above have been produced.

Due to the nature of this motion, it is deemed the government is opposed. All defendants that have not joined this motion do not oppose.

Wherefore, Christopher Garcia and joining defendants respectfully request that this Court issue an Order to Show Cause and ascertain why the Government has not yet abided by the Court's oral orders during the May 9-10, 2017 hearings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was sent via the Court's CM/ECF system to opposing counsel, AUSAs Maria Armijo, Randy Castellano, and Matthew Beck, this 13th day of October 2017.

/s

Amy Sirignano, Esq.